□ Copies sent by date stamped mail on 9/26/2017 to; -Angela Borelli - Administratrix of the Estate of Brandon Giordano, -Officer Anthony Renaldi, -Officer Michael Jasmin, -William King, &

-Thomas Smith, -Town of Seymour, -Lynch, Traub, Keefe & Errante PC; and -Howd & Ludorf LLC sent by; John Urban (TAC)

DOCKET NO. AAN-CV-14-6015474-S	:	SUPERIOR COURT
ANGELA BORELLI, ADMINISTRATRIX	:	J.D. OF ANSONIA-MILFORD
V.	:	AT MILFORD
ANTHONY RENALDI	:	SEPTEMBER 26, 2017

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MEMORANDUM OF DECISION

This wrongful death action arises from a police pursuit of a motor vehicle on March 9, 2012. The plaintiff's decedent, Brandon Giordano, was a back seat passenger in the pursued vehicle operated by Eric Ramirez, and was killed when the vehicle rolled over onto its roof. The plaintiff, Angela Borelli, is Giordano's mother and the administratrix of his estate.

The plaintiff filed a four count complaint against three officers of the Seymour Police Department, Anthony Renaldi, Michael Jasmin, and William King, and the Town of Seymour. The plaintiff claims in the first count that Renaldi and Jasmin negligently pursued the vehicle in which Giordano was a passenger, and, in the second count, that King was negligent in failing to properly follow certain written policies to terminate the pursuit, causing Giordano's death. The plaintiff also asserts in the third count that Seymour is liable to her for the negligent acts and omissions of its officers pursuant to General Statutes § 52-557n, and, in the fourth count, for statutory indemnification in accordance with General Statutes § 7-465.

The defendants filed an answer and special defenses to the complaint. In their special defenses, the defendants claim that the plaintiff's claims are barred by common law and statutory governmental immunity, and that Giordano was comparatively negligent in subjecting himself to serious injury or death in entering the Ramirez vehicle under the

circumstances. The defendants have also made apportionment claims against Giordano and Ramirez.

The defendants move for summary judgment on the plaintiff's complaint. The defendants contend that there are no genuine issues of material fact that (1) the plaintiff's action is barred by the doctrine of governmental immunity; (2) Jasmin and King did not owe any duty to the plaintiff; (3) Renaldi did not breach his duty to maintain continuous communication in conformance with the department's policies; (4) the individual defendants' conduct was the cause of the decedent's death; and, as a result, (5) the plaintiff's statutory claims against Seymour fail as a matter of law.

The plaintiff opposes summary judgment and claims that Jasmin and King owed the plaintiff a duty of care; there are questions of material fact as to whether Renaldi properly communicated the pursuit; governmental immunity does not bar this action; and, in view of the foregoing, Seymour is responsible to the plaintiff pursuant to §§ 52-557n and 7-465.

The following facts are undisputed. On the evening of March 9, 2012, Giordano was a back seat passenger in a Ford Mustang convertible operated by his friend, Ramirez. Another friend, Dion Major, was a passenger in the front seat. They were headed to Major's house in Seymour at the time of the accident.

Ramirez exited Route 8 northbound at Exit 22 in Seymour, and proceeded to turn left onto Route 67 towards Oxford. At the time he was operating his vehicle on Route 67, Ramirez had activated a set of lights that were affixed to the undercarriage. The lights are commonly referred to as underglow lights, the use of which lights are illegal in this state.

As Ramirez proceeded on Route 67 in Seymour, his vehicle came to the attention of Renaldi, who was patrolling the west side of Seymour. Renaldi observed Ramirez's vehicle had illuminated underglow lights, and he decided to pull him over. Renaldi was quickly able to position his vehicle behind Ramirez's vehicle. Ramirez accelerated his vehicle in response, and Renaldi sped up his vehicle in an attempt to lessen the distance between the two vehicles. Ramirez continued operating his vehicle at a high rate of speed, and illegally passed a few vehicles being operated in the same direction of travel on Route 67. At the time Ramirez illegally passed the vehicles, if not before that time, Renaldi activated his emergency lights and siren with the intent to stop Ramirez's reckless driving. After he activated his lights and sirens, Renaldi notified dispatch that he was engaged in pursuit of Ramirez's Mustang. Renaldi pursued Ramirez's vehicle into Oxford. After a few miles, Ramirez turned off Route 67 onto Old State Road in Oxford. Renaldi lost sight of the vehicle when it turned onto Old State Road. While operating his vehicle on Old State Road, Ramirez's vehicle struck an embankment off the side of Old State Road and turned over onto its roof. Giordano, who was fifteen years old at the time, was killed in the accident. Ramirez and Major survived. Renaldi located the overturned vehicle near a commercial building, approximately two tenths of a mile from the intersection of Route 67 and Old State Road. The entire pursuit lasted less than two minutes.

The parties dispute whether Jasmin engaged in the pursuit of Ramirez's vehicle. Based on the statement of an independent witness, Steven Landi, the plaintiff alleges that Jasmin "joined" the pursuit of Ramirez's vehicle. The defendants claim that Jasmin did not owe a duty to Giordano because there is no evidence that Jasmin participated in the pursuit.

In his statement, Landi stated that after the Ramirez and Renaldi vehicles passed him, he "continued south on Route 67 and a second police car passed me traveling north. The second car was about six or seven car lengths behind the first cruiser and also had its emergency lights on but no siren. I continued south on Route 67, and as I approached the Mobil Station near Mountain Road another cruiser pulled out with its emergency lights on and headed north on Route 67 towards Oxford."

Jasmin has submitted an affidavit in opposition to summary judgment. There, he states that he never pursued the Ramirez vehicle, and never observed "a patrol vehicle in pursuit of the Mustang." Jasmin did respond to Old State Road to assist Renaldi after the accident. Based on the evidence, there is no dispute that the third police car referred to by Landi was the one operated by Jasmin.

The present action ensued. Additional facts will be discussed as necessary.

"Summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. . . . In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party. . . . Although the party seeking summary judgment has the burden of showing the nonexistence of any material fact [however] a party opposing summary judgment must substantiate its adverse claim by showing that there is a genuine issue of material fact together with the evidence disclosing the existence of such an issue. . . . It is not enough . . . for the opposing party merely to assert the existence of such a disputed issue . . . . Mere assertions of fact, whether contained in a complaint or in a brief, are insufficient to establish

the existence of a material fact and, therefore, cannot refute evidence properly presented to the court [in support of a motion for summary judgment].

"As a general rule, then, [w]hen a motion for summary judgment is filed and supported by affidavits and other documents, an adverse party, by affidavit or as otherwise provided by . . . [the rules of practice], must set forth specific facts showing that there is a genuine issue for trial, and if he does not so respond, summary judgment shall be entered against him. . . . Requiring the nonmovant to produce such evidence does not shift the burden of proof. Rather, it ensures that the nonmovant has not raised a specious issue for the sole purpose of forcing the case to trial." (Citations omitted; emphasis omitted; internal quotation marks omitted.) *Squeo* v. *Norwalk Hospital Assn.*, 316 Conn. 558, 593-94, 113 A.3d 932 (2015).

"[T]he ultimate determination of whether qualified immunity applies is ordinarily a question of law for the court . . . [unless] there are unresolved factual issues material to the applicability of the defense . . . [where the] resolution of those factual issues is properly left to the jury." (Internal quotation marks omitted.) *Bonington* v. *Westport*, 297 Conn. 297, 306, 999 A.2d 700 (2010).

I

DOCTRINE OF QUALIFIED MUNICIPAL IMMUNITY

The court will first address the defendants' claim that the plaintiff's action against the defendants is barred by the doctrine of governmental immunity, and no exception to governmental immunity applies. "[Section] 52-557n abandons the common-law principle of municipal sovereign immunity and establishes the circumstances in which a municipality may

be liable for damages. . . . One such circumstance is a negligent act or omission of a municipal officer acting within the scope of his or her employment or official duties. . . . [Section] 52–557n (a) (2) (B), however, explicitly shields a municipality from liability for damages to person or property caused by the negligent acts or omissions which require the exercise of judgment or discretion as an official function of the authority expressly or implicdly granted by law.

"Municipal officials are immune from liability for negligence arising out of their discretionary acts in part because of the danger that a more expansive exposure to liability would cramp the exercise of official discretion beyond the limits desirable in our society. . . . Therefore, [d]iscretionary act immunity reflects a value judgment that--despite injury to a member of the public--the broader interest in having government officials and employees free to exercise judgment and discretion in their official functions, unhampered by fear of second-guessing and retaliatory lawsuits, outweighs the benefits to be had from imposing liability for that injury. . . . The hallmark of a discretionary act is that it requires the exercise of judgment. . . . In contrast, municipal officers are not immune from liability for negligence arising out of their ministerial acts, defined as acts to be performed in a prescribed manner without the exercise of judgment or discretion.

"Although the determination of whether official acts or omissions are ministerial or discretionary is normally a question of fact for the fact finder . . . there are cases where it is apparent from the complaint . . . [that the nature of the duty] and, thus, whether governmental immunity may be successfully invoked pursuant to . . . § 52–557n (a) (2) (B), turns on the character of the act or omission complained of in the complaint. . . . Accordingly, where it is apparent from the complaint that the defendants' allegedly negligent acts or omissions

necessarily involved the exercise of judgment, and thus, necessarily were discretionary in nature, summary judgment is proper." (Citations omitted; footnote omitted; internal quotation marks omitted.) *Coley* v. *Hartford*, 312 Conn. 150, 161-62, 95 A.3d 480 (2014).

A

Discretionary Act Immunity

The defendants contend that Renaldi, Jasmin and King[1] are shielded from the plaintiff's claims by the doctrine of governmental immunity. The defendants claim that the challenged conduct of Renaldi and Jasmin required the exercise of discretionary acts to which the immunity attaches. More particularly, the defendants contend that Renaldi's decision to initiate, conduct, and terminate the pursuit of Ramirez's vehicle involve discretionary acts, and, assuming that he was engaged in pursuit, Jasmin's decisions were likewise discretionary. The plaintiff disagrees.

The court's discussion of the discretionary act immunity issue in the present action begins with our state statute that addresses the rights and duties of emergency vehicles, such as those at issue in the present case.[2] General Statutes § 14-283 (b) (1) provides as follows: "The operator of any emergency vehicle may (A) park or stand such vehicle, irrespective of

[1] The plaintiff's negligence allegations against King are set forth in the second count of the complaint. There is no dispute that at the time of the accident, King was a sergeant and supervisor of the midnight shift. The plaintiff's allegations are premised on the claim that "King was made aware of the pursuit." The plaintiff contends that King was negligent in violation of various pursuit policies in failing to properly evaluate and terminate the pursuit, and ensure proper procedures were used. Based on the evidence, including the affidavit of King that he did not become aware of the pursuit until *after* the Ramirez vehicle had crashed on Old State Road, there is no genuine issue of material fact that King did not owe a duty to Giordano. Any such duty would only arise if King was made aware of the pursuit while it was ongoing. Therefore, the defendants have demonstrated that they are entitled to a judgment as a matter of law on the second count, and their motion for summary judgment on that count is granted. As a result, the court will only discuss the plaintiff's claims against Renaldi and Jasmin on the municipal immunity issue.

[2] There is no dispute that the police vehicles operated by Renaldi and Jasmin are emergency vehicles within the meaning of the statute.

the provisions of this chapter, (B) except as provided in subdivision (2) of this subsection, proceed past any red light or stop signal or stop sign, but only after slowing down or stopping to the extent necessary for the safe operation of such vehicle, (C) exceed the posted speed limits or other speed limits imposed by or pursuant to section 14-218a or 14-219 as long as such operator does not endanger life or property by so doing, and (D) disregard statutes, ordinances or regulations governing direction of movement or turning in specific directions." A subsequent subsection provides that "[t]he provisions of this section shall not relieve the operator of an emergency vehicle from the duty to drive with due regard for the safety of all persons and property." General Statutes § 14-283 (d).

"The effect of [§ 14-283] is merely to displace the conclusive presumption of negligence that ordinarily arises from the violation of traffic rules. The statute does not relieve operators of emergency vehicles from their general duty to exercise due care for the safety of others." *Tetro* v. *Stratford*, 189 Conn. 601, 609, 458 A.2d 5 (1983).

"Although the determination of whether official acts or omissions are ministerial or discretionary is normally a question of fact for the fact finder . . . there are cases [in which] it is apparent from the complaint . . . [that the nature of the duty] . . . turns on the character of the act or omission complained of in the complaint. . . . Accordingly, [when] it is apparent from the complaint that the defendants' allegedly negligent acts or omissions necessarily involved the exercise of judgment, and thus necessarily were discretionary in nature, summary judgment is proper. . . . Lastly, [d]etermining whether it is apparent on the face of the complaint that the acts complained of are discretionary requires an examination of the nature of the alleged acts or omissions." (Citation omitted; internal quotation marks omitted.) *Strycharz* v. *Cady*, 323 Conn. 548, 565, 148 A.3d 1011 (2016).

In her complaint, the plaintiff alleges that Renaldi and Jasmin were negligent in failing (1) to initiate and conduct the pursuit in accordance with the regulations of the state of Connecticut and the department; (2) to maintain continuous communication with dispatch, and to supply required information, in accordance with the regulations of the state and the department; (3) to operate their police vehicles with due regard for the safety of the public in accordance with the regulations of the state and the department, and the provisions of state statute; and (4) in operating their vehicles at excessive speeds in violation of state statutes, and in violation of the regulations of the state and the department. The crux of the plaintiff's allegations against Renaldi and Jasmin is that they were negligent in their pursuit of Ramirez.

The plaintiff's claim that Renaldi and Jasmin's duties in pursuing Ramirez's vehicle were ministerial are grounded in General Statutes § 14-283 and § 5.11.12 (B)[3] of the department's pursuit policy. More particularly, the plaintiff contends, pursuant to § 14-283, that Renaldi and Jasmin had a ministerial duty "to drive with regard to the safety of all persons," and, under the section of the town pursuit policy, they "were both obligated to follow specific factors that a police officer must consider" as part of a pursuit situation.

There is a split of authority in our trial courts as to whether the duty of a police officer to operate his vehicle with due care for the safety of others is ministerial or discretionary in nature. This issue is directly addressed in a detailed and well-reasoned decision by Judge Brazzel-Massaro in *Parker* v. *Stadalink*, Superior Court, judicial district of Waterbury, Docket No. CV-13-6020769-S (May 4, 2016, *Brazzel-Massaro, J.*), which involved a police

[3] Section 5.11.12 (B) provides: "A continuing pursuit (over a greater distance and for a longer period of time) is authorized when the pursuing officer has reasonable grounds to believe that an individual clearly exhibits an intent to avoid arrest by using his motor vehicle to flee. It is important that an officer weigh the seriousness of the offense which has been committed against the hazards present to the health and welfare of citizens that might be affected by the chase. If the pursuit is initiated, a continuous balancing of the seriousness versus public safety is mandatory."

pursuit of a vehicle. It would serve no useful purpose to repeat the discussion, analysis or cases cited by Judge Brazzel-Massaro in her decision here. The court agrees with Judge Brazzel-Massaro's reasoning in *Parker*, and her holding "that the duty to drive safely in § 14-283 is discretionary, not only for the reasons stated in the other Superior Court decisions holding likewise but also based on statutory interpretation guided by longstanding appellate authority on the difference between ministerial and discretionary duties." Id.

This conclusion is consistent with recent appellate court decisions challenging the conduct of municipal police departments. "We begin by observing the broad scope of governmental immunity that is traditionally afforded to the actions of municipal police departments. [I]t is firmly established that the operation of a police department is a governmental function, and that acts or omissions in connection therewith ordinarily do not give rise to liability on the part of the municipality. . . . [Accordingly] [t]he failure to provide, or the inadequacy of, police protection usually does not give rise to a cause of action in tort against a city. . . . Although the issue in the present case does not concern the deployment of police officers generally, but rather the defendant's alleged failure to adhere to specific police response procedures, we find *Gordon* [v. *Bridgeport Housing Authority*, 208 Conn. 161, 544 A.2d 1185 (1988)] instructive because it underscores the considerable discretion inherent in law enforcement's response to an infinite array of situations implicating public safety on a daily basis." (Citations omitted; internal quotation marks omitted.) *Coley* v. *Hartford*, supra, 312 Conn. 164. "The fact that a claim is based upon a defendant's alleged failure to enforce a statute, however, does not, in and of itself, make enforcement of that statute a ministerial duty. . . . Rather, a police officer's decision whether and how to enforce a statute necessarily requires an examination of the surrounding circumstances and a determination as to what

enforcement action, if any, is necessary and appropriate in those circumstances. Such a decision thus invariably involves the exercise of judgment and discretion. Indeed, even if the command of a statute is mandatory, it is well settled that a police officer's decision whether or not to enforce the statute in particular circumstances is a matter that requires the exercise of judgment and discretion." (Citation omitted.) *Faulkner* v. *Daddona*, 142 Conn. App. 113, 122-23, 63 A.3d 993 (2013).

It is readily apparent from examination of the allegations in the plaintiff's complaint that the alleged acts and omissions of Renaldi and Jasmin concerning their police pursuit of Ramirez's vehicle inherently involve the exercise of judgment and discretion. Any police pursuit involves unique circumstances, including the nature of the offense, traffic, weather, road conditions, and time of day. General Statutes § 14-283 and § 5.11.12 (B) of the town's pursuit policy both require a police officer operating an emergency vehicle to exercise due care for the safety of the general public. This language does not direct an officer to perform that act in a ministerial fashion, but reaffirms the officer's duty to exercise his judgment and discretion in a reasonable and rational manner under the circumstances with which he is confronted.

In view of the foregoing, Renaldi and Jasmin are clothed in discretionary act immunity, and, consequently, they are immune from liability to the plaintiff under our statutory and common law. The plaintiff further claims, however, that an exception to discretionary act immunity applies.

B

Identifiable Person/Member of Class Exception to Municipal Immunity

"There are three exceptions to discretionary act immunity. Each of these exceptions represents a situation in which the public official's duty to act is [so] clear and unequivocal that the policy rationale underlying discretionary act immunity—to encourage municipal officers to exercise judgment—has no force. . . . First, liability may be imposed for a discretionary act when the alleged conduct involves malice, wantonness or intent to injure. . . . Second, liability may be imposed for a discretionary act when a statute provides for a cause of action against a municipality or municipal official for failure to enforce certain laws. . . . Third, liability may be imposed when the circumstances make it apparent to the public officer that his or her failure to act would be likely to subject an identifiable person to imminent harm. . . .

"[T]his exception to the general rule of governmental immunity for employees engaged in discretionary activities has received very limited recognition in this state. . . . Our courts have applied the exception when the circumstances make it apparent to the public officer that his or her failure to act would be likely to subject an identifiable person to imminent harm. . . . By its own terms, this test requires three things: (1) an imminent harm; (2) an identifiable victim; and (3) a public official to whom it is apparent that his or her conduct is likely to subject that victim to that harm. . . . The failure to establish any one of the three prongs precludes the application of the identifiable person subject to imminent harm exception. . . .

"With respect to the identifiable victim element, our Supreme Court has stated that this exception applies not only to identifiable individuals but also to narrowly defined identified classes of foreseeable victims. . . . [W]hether a particular plaintiff comes within a cognizable class of foreseeable victims for purposes of this narrowly drawn exception to qualified immunity ultimately is a question of law for the courts, in that it is in effect a question of whether to impose a duty of care. . . . In delineating the scope of a foreseeable class of victims' exception to governmental immunity, our courts have considered numerous criteria, including the immanency of any potential harm, the likelihood that harm will result from a failure to act with reasonable care, and the identifiability of the particular victim." (Citations omitted; internal quotation marks omitted.) *Merritt* v. *Bethel Police Dept.*, 120 Conn. App. 806, 811-13, 993 A.2d 1006, (2010).

The defendants contend that the decedent did not belong either to a class of identifiable victims or was an identifiable individual subject to imminent harm. The plaintiff claims that the decedent was a member of a foreseeable class of victims defined as "innocent passengers in the pursued vehicle" who are entitled to public safety. Alternatively, the plaintiff argues that the decedent was an identifiable victim because "Renaldi was aware of . . . Ramirez's strange and unpredictable driving habits when he decided to engage in pursuit," and, in any event, Renaldi "clearly had notice of the decedent's presence."

There are no allegations or evidence in the present action that supports the plaintiff's claim that the decedent was a member of a foreseeable class of victims. Specifically, there is no allegation or evidence that the decedent was statutorily compelled or mandated to get into Ramirez's vehicle, which evidence, as hereinafter discussed, is required to satisfy membership in a narrowly defined class of victims. The reasonable inference from the

undisputed facts is that the decedent voluntarily entered Ramirez's vehicle to ultimately go to Major's house.

In *Durrant* v. *Board of Education*, 284 Conn. 91, 931 A.2d 859 (2007), our Supreme Court discussed the extremely narrow definition of an identifiable class of foreseeable victims subject to imminent harm for purposes of satisfying that exception to the qualified immunity of a municipal employee for discretionary acts: "In our recent decision in *Durrant*, we emphasized the narrowness of the class of persons who may be identified as foreseeable victims, and concluded that a six year old child present on school grounds to attend an after school day care program, and by association, his mother, who was injured when she fell on school grounds after she arrived to pick her child up, were not member[s] of an identifiable class of foreseeable victims subject to imminent harm for purposes of satisfying that exception to the qualified immunity of a municipal employee for discretionary acts. . . . Assuming that the imminent harm requirement had been satisfied, we emphasized that [t]he only identifiable class of foreseeable victims that we have recognized for these purposes is that of schoolchildren attending public schools during school hours because: they were intended to be the beneficiaries of particular duties of care imposed by law on school officials; they were legally required to attend school rather than being there voluntarily; their parents were thus statutorily required to relinquish their custody to those officials during those hours; and, as a matter of policy, they traditionally require special consideration in the face of dangerous conditions." (Citation omitted; internal quotation marks omitted.) *Grady* v. *Somers*, 294 Conn. 324, 351-52, 984 A.2d 684 (2009).

In *Durrant*, "the plaintiff was not a member of a narrowly defined class of foreseeable victims because she was not compelled statutorily to relinquish protective custody of her

child. No statute or legal doctrine required the plaintiff to enroll her child in the after school program; nor did any law require her to allow her child to remain after school on that particular day. . . . The plaintiff's actions were entirely voluntary, and none of her voluntary choices imposes an additional duty of care on school authorities . . . despite the fact that our state statutes condone and even encourage the use of public school facilities for the very purpose for which the plaintiff's child was in attendance at the school on the day of the plaintiff's fall." (Citation omitted; footnote omitted; internal quotation marks omitted.) Id., at 352.

"Our Supreme Court explained in *Grady* that we have not recognized any additional classes of foreseeable victims outside of the public school context, and, even in such a context, such a class has only been recognized where attendance has been compulsory. . . . The plaintiff in *Grady* had been injured at the town transfer station, and he argued that as a town resident, who had purchased a permit for the transfer station, he was within a class of foreseeable victims. . . . Our Supreme Court stated: [W]hether a particular plaintiff comes within a cognizable class of foreseeable victims for purposes of this exception to qualified immunity is ultimately a question of policy for the courts, in that it is in effect a question of duty . . . [that] involves a mixture of policy considerations and evolving expectations of a maturing society . . . . Nevertheless, under our case law . . . wherein we have interpreted the identifiable person element narrowly as it pertains to an injured party's compulsion to be in the place at issue, we conclude that the plaintiff is not a member of a class of foreseeable victims because, as he acknowledges, he was not legally required to dispose of his refuse by taking it to the transfer station personally and could have hired an independent contractor to

do so." (Citations omitted; internal quotation marks omitted.) *Merritt* v. *Bethel Police Dept.*, supra, 120 Conn. App. 814-15.

Also, there is no evidence that the plaintiff's decedent was an identifiable person subject to imminent harm. "[I]n addition to not recognizing any additional classes of foreseeable victims, the decisions [of our Supreme Court] reveal only one case wherein a specific plaintiff was held potentially to be an identifiable victim subject to imminent harm for purposes of this exception to qualified immunity. See *Sestito* v. *Groton*, [178 Conn. 520, 522–23, 423 A.2d 165 (1979)] (facts presented jury question in case wherein on-duty town police officer watched and witnessed ongoing brawl in bar's parking lot but did not intervene until after participant had shot and killed plaintiff's decedent). *Sestito* appears, however, to be limited to its facts, as the remainder of the case law indicates that this exception has been applied narrowly, because [a]n allegedly identifiable person must be identifiable as a potential victim of a specific imminent harm." (Internal quotation marks omitted.) Id., 815-16.

In the present case, the plaintiff alleges in her complaint that Renaldi and Jasmin "knew that [the decedent] Giordano was a passenger in the Ramirez vehicle," but have not offered any evidence in support of that claim. In fact, the plaintiff argues in her memorandum in support of summary judgment that, under the circumstances, "it is *apparent* that . . . Renaldi knew of the presence of the passengers but willfully choose to disregard their safety as he negligently engaged the pursuit." (Emphasis added.) The only evidence, however, is that Giordano was sleeping in the backseat of Ramirez's vehicle during the pursuit. Major testified at his deposition that "everyone was tired. That was the first time I had ever seen [Giordano] fall asleep in the back seat." There simply is no evidence that Giordano fits within the very narrow exception to governmental immunity for an identifiable victim subject to

imminent harm. In view of the foregoing, the defendants' motion for summary judgment on the first count of the plaintiff's complaint, which count is brought against Renaldi and Jasmine, is granted.

II

Municipal Indemnification Statute General Statutes § 7-465

The plaintiff claims in the fourth count that Seymour is liable to her pursuant to § 7-465. "Section 7-465 is a municipal employee indemnification statute. . . . T]he legislature has provided for indemnification by municipalities of municipal officers, agents or employees who incur liability for certain of their official conduct. . . . To invoke § 7-465, the plaintiffs first must allege in a separate count and prove the employee's duty to the individual injured and the breach thereof. Only then may the plaintiff go on to allege and prove the town's liability by indemnification. . . . While § 7-465 provides an indemnity to a municipal employee from his municipal employer in the event the former suffers a judgment under certain prescribed conditions, it is quite clear that the municipality does not assume the liability in the first instance." (Citations omitted; emphasis omitted; internal quotation marks omitted.) *Alifeter* v. *Naugatuck*, 53 Conn. App. 791, 799, 732 A.2d 207 (1999).

"Whatever may be the full scope and effect of the statute, in no event may the municipality be held liable under it unless the municipal employee himself becomes obligated to pay [sums] by reason of the liability imposed upon . . . [him] by law for physical damages to person or property. . . . While § 7-465 provides an indemnity to a municipal employee from his municipal employer in the event the former suffers a judgment under certain prescribed conditions, it is quite clear that the municipality does not assume the liability in the first

instance. Once a plaintiff has successfully pursued a cause of action and obtained judgment against the defendant municipal employee, the latter can (1) pay the judgment and request reimbursement from the municipality or (2) request the municipality to pay the judgment in his behalf." (Citation omitted; internal quotation marks omitted.) *Kostyal* v. *Cass*, 163 Conn. 92, 97-98, 302 A.2d 121 (1972).

As previously discussed, the court grants summary judgment on the first three counts of the complaint against the defendants, Renaldi, Jasmine and King. Because Seymour is not responsible to the plaintiff in the first instance, the plaintiff's claim against Seymour under § 7-465 fails as a matter of law. Therefore, the court grants summary judgment in favor of Seymour on the fourth count.

III

CONCLUSION

In view of the foregoing conclusions, the court need not address the remaining arguments brought by the plaintiff. In summary, the defendants' motion for summary judgment is granted on all four counts of the plaintiff's complaint.

Theodore R. Tyma

TYMA, J.